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IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

No. 82-185

BOSTON FIREFIGHTERS UNION, LOCAL 718,
Petitioner,
v.
BOSTON CHAPTER, NAACP, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, AS AMICUS CURIAE

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BRIEF OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, AS AMICUS CURIAE

INTEREST OF THE IAFF AS AMICUS CURIAE*

The International Association of Fire Fighters, AFL-CIO (IAFF) is an unincorporated association comprised of municipal, state, and federal fire fighters throughout the United States and Canada. The current membership includes approximately 153,000 state and municipal fire fighters employed by states, cities, and towns across the United States.

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* This brief is filed with the consent of all parties. The letters of consent have been filed with the Clerk of the Court.

The IAFF's objectives include promoting and securing improved wages, hours, and working conditions of fire fighters through collective bargaining, legislation, legal action, and other appropriate means.

The IAFF here represents the interests of its many members across the country who are facing, or may face, the prospects of layoffs caused by fiscal exigencies such as those which were carried out by the City of Boston, and who are employed pursuant to seniority systems established by state and/or local law.

The prospects of reductions-in-force in these jurisdictions are not merely conjectural. In a report issued by the Bureau of National Affairs, figures released showed that layoffs of state workers occurred in fiscal year 1981 in 43 of the 50 states, while in fiscal 1982, 44 states either experienced layoffs or anticipated them by the end of the year. "Layoffs, Rifs, and EEO in the Public Sector, A BNA Special Report," Government Employee Relations Report, GERR No. 949, February 8, 1982, pp. 13-15.

The financial situation among local governments similarly indicates a stark outlook. In a survey of 100 cities, 62 have laid off or were expecting to layoff employees in fiscal year 1982. Many of these jurisdictions are covered by civil service laws which contain seniority-based layoff provisions that determine the order in which employees will be furloughed in work force reductions. Like Boston, many cities whose firefighters are members of the IAFF have also entered into consent decrees to settle employment discrimination lawsuits. Government Employee Relations Report, supra, at 23-36. There is no indication that the financial problems of state and local governments will significantly improve in the near future, and the prospects for continued reductions-in-force remain substantial.

ISSUE TO BE COVERED IN THE BRIEF AMICUS CURIAE

This brief addresses the central question raised in this case: May a federal court enjoin the operation of a *bona fide* seniority system which effects delays in the attainment of minority employment quotas agreed to in a consent decree absent any findings of intentional discrimination?

The minority-conscious percentage goals which in part formed the basis of the voluntary settlement of the original proceedings in this case in 1974 were arrived at after findings by the District Court that the hiring and recruitment practices of the Boston Fire Department, although not discriminatory in purpose, had resulted in a disproportionate number of minority applicants being denied entry into the Department's workforce. *Boston Chapter, NAACP Inc. v. Beecher*, 371 F.Supp. 507 (D. Mass. 1974). In the consent decree, the parties agreed to certain alterations in these hiring and recruitment procedures to secure for minorities greater access to employment with the Department. Specifically, these changes included the certification and hiring of minority applicants on a priority basis until such time as the percentage of minority employees in the Department reached the same level as the percentage of minorities in the surrounding community. *Id.*

The purpose of the decree was not to reform the terms and conditions governing Department employees; rather it was only to correct an imbalance in the number of applicants who became employees. No seniority-based relief is contained in the consent decree. *Id.* at 520-523.

The purpose of this brief *amicus curiae* is to explore the ramifications of the lower court's modification of the consent decree to enjoin layoffs on a last-hired, first-laid off basis pursuant to a *bona fide* seniority system and to show that the lower court's action in these circumstances

exceeded the well-established limitations placed upon the federal judiciary by the Constitution.[1]

SUMMARY OF ARGUMENT

The *legal* foundation for the original consent decree rested on the equal protection clause of the Fourteenth Amendment, Section 1981, and Title VII. The *factual* foundation for the decree was that the recruitment and hiring processes resulted in a disparate impact on the percentage of minorities in the workforce, although no intentional discrimination had occurred. Thus the District Court imposed, with the consent of the parties, affirmative requirements designed to boost the number of minorities entering the Department in order to recast the overall employee complement to reflect a greater percentage of minority workers.

Two significant decisions of this Court post-dated the decree. First, in 1976, this Court decided that disproportionate racial impact alone was insufficient to make out an equal protection violation—proof of discriminatory racial purpose is required as well. *Washington v. Davis*, 426 U.S. 229 (1976).

Second, last term, this Court confirmed that liability should not be imposed under Section 1981 without proof of intentional discrimination. *General Building Contractors Assn. v. Pennsylvania*, —— U.S. ——, 73 L.Ed. 2d 835 (1982).

These developments severely eroded the legal predicates of the decree insofar as its continuing prospective vitality was concerned. Due to the lack of a finding of intentional discrimination on the facts which gave birth to the decree in the first place, any additional equitable relief requested by the plaintiffs could no longer be based on the Fourteenth Amendment or Section 1981. Until 1981, however,

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[1] We do not here express an opinion on the Tenth Amendment issues posed by the State of Massachusetts.

these developments were of little moment to this case because the relief being implemented was adequately supported by the remaining Title VII findings.

In 1981, however, financial requirements in Boston caused the City to undertake reductions in force. State statute required such reductions to occur on a reverse seniority basis. Those minority employees who had benefitted from the decree by being hired into the Department had been accorded seniority as of their dates of entry into the workforce. No findings of identifiability of victims of the City's unintentional discrimination had occurred, and no rightful place seniority relief was contemplated in the decree. The seniority-based reductions in force, concedely neutral, nevertheless consequently affected these minority workers in greater numbers than non-minority employees with earlier dates of hire. Pet. App. A1-A26, A30 et seq.

Plaintiffs returned to the District Court seeking modification of the decree to prevent these layoffs. Joint App. 42a. Otherwise, plaintiffs argued, the gains achieved under the decree would be vitiated by virtue of the disproportionate number of minorities who possessed insufficient seniority to avoid the layoffs. Pet. App. A2.

The powers of the District Court at that point, however, were severely circumscribed. Possessed of no findings of discriminatory purpose, the underlying Constitutional and Section 1981 bases for its earlier orders no longer retained any vitality and could not justify any further relief. Title VII remained available to support maintenance of the status quo except for the fact that the layoffs were seniority-based with no discriminatory overtones. There existed no previous finding and no current basis for holding that the statutory layoff system was anything other than a *bona fide* seniority system protected by Section 703(h) of Title VII.

Because the equity powers of the court were limited to those remedies provided by the statute upon which its jurisdiction to issue the decree was based, and because the goals of the decree necessarily paralleled the purposes of the statute, the Court was powerless to grant plaintiffs additional relief which was proscribed by the statute.

Accordingly, because Section 703(h) preserved the operation of the seniority system as an exception to Title VII's prohibition against unlawful practices and procedures that tend to perpetuate the effects of prior discriminatory employment practices, the layoffs pursuant to the seniority system could not be enjoined despite the effect they might have had upon the achievement of the racial goals embodied in the consent decree.

The principle we urge this Court to uphold in this case is that a seniority system, formulated and operated without any discriminatory purpose or intent, may not be enjoined or superseded by a district court merely because its operation may effect delays in the attainment of employment quotas contained in a consent decree issued in response to findings of unintentional discrimination in hiring.

ARGUMENT

THE OPERATION OF A BONA FIDE SENIORITY SYSTEM MAY NOT BE ENJOINED EVEN THOUGH IT MAY EFFECT DELAYS IN THE ATTAINMENT OF MINORITY EMPLOYMENT QUOTAS AGREED UPON IN A CONSENT DECREE.

A. The Seniority System In Question.

This Court has long recognized the "vast and increasing importance" of seniority in this country's system of employment. *Franks v. Bowman Transportation Company, Inc.*, 424 U.S. 747, 765 (1976). "Competitive status" seniority, which determines "who gets or who keeps an available job" in a layoff situation, has been described by

this Court to possess "overriding importance" because it affects the economic security of an employee more than any other term or condition of employment. *Id.* at 766. *See, American Tobacco Company v. Patterson*, —— U.S. ——, 71 L.Ed.2d 748 (1982).

In the area of employment discrimination, the routine application of systems of competitive seniority which have been created or operated without a racially discriminatory purpose has been immunized from the statutory proscriptions against employment practices which, although neutral on their face and in intent, nonetheless discriminate in effect against a particular group. *Teamsters v. United States*, 431 U.S. 324, 348-354 (1977).

Section 703(h) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(h), specifically provides:

> "Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority . . . system, . . . provided that such differences are not the result of an intention to discriminate because of race . . . or national origin. . . ."

As this Court concluded in *Teamsters*, "the unmistakable purpose of § 703(h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII." 431 U.S. at 352. In so holding, the Court acknowledged that the longest tenure employees, even though they might without exception be white, would enjoy a " 'disproportionate distribution of advantages [which] in a very real sense [would] operate to 'freeze' the status quo of prior discriminatory employment practices.' " 431 U.S. at 350. Nevertheless, this Court recognized that this perpetuation effect could not overcome "the congressional judgment . . . that Title VII should not outlaw the use of existing seniority lists and

thereby destroy or water down the vested seniority rights of employees. . . ." 431 U.S. at 353.[2]

Seniority in this case exists by virtue of a Massachusetts statute which defines seniority of a civil service employee to mean "ranking based on length of service [which] shall be computed from the first date of full-time employment as a permanent employee, including the required probationary period. . . ." Mass. Gen. Laws Ch. 31, Section 33. Under this statute, seniority controls in situations wherein permanent employees "are to be separated from [their] positions because of lack of work or lack of money or abolition of positions." Mass. Gen. Laws Ch. 31, Section 39. "[E]mployees senior in length of service . . . shall be retained the longest and reinstated first." *Id.*

The statute goes on to provide specific procedures applicable to the operation of the seniority system.[3] There has at no time been any challenge mounted to the neutrality and non-discriminatory genesis and operation of

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[2] It is of no legal consequence whether the discriminatory impact being perpetuated occurred before or after the passage of the Act. *American Tobacco Company v. Patterson, supra,* —— U.S. at ——, 71 L.Ed.2d at 748-749.

[3] Section 703(h) does not define the term "seniority system." This Court has interpreted the term to mean "a scheme that . . . allots to employees ever improving employment rights and benefits as their relative lengths of pertinent employment increase." *California Brewers Association v. Bryant,* 444 U.S. 598, 605-606 (1980). "The example of a 'seniority system' most frequently cited in the congressional debates was one that provided that the 'last hired' employee would be the 'first fired.'" *Id.* at 605, fn. 10.

There can be no serious dispute that the provisions of the Massachusetts statute represent what this Court has considered "the core concepts of 'seniority.'" *Id.* at 606. Rights of employees are determined solely according to length of employment. The principal feature of the Massachusetts system, "like any and every 'seniority system' is that preferential treatment is dispensed on the basis of some measure of time served in employment." *Id.* For these reasons, the seniority system involved here falls within the meaning of Section 703(h) of the Act.

this system. Its continued operation is therefore correct and proper under Title VII, even though it may perpetuate past discrimination by the employer.[4]

B. The Effect Of The Seniority System Upon The Consent Decree.

The Consent Decree which formed the basis for the lower courts' orders was entered in 1974 after findings by the District Court that the City's employment entrance examination was not job-related and had a disproportionate impact on minority hiring, and that a word-of-mouth recruitment policy also resulted in unintentional racial discrimination.

With the agreement of the parties, the Court decreed that a job-related examination be developed, that minority applicants be actively recruited, and that priority certification groups for Black and Hispanic applicants be created and continue in effect until percentage goals equivalent to the percentage of minorities in the surrounding community had been met. The consent decree contained no provisions related to seniority or layoffs. *Boston Chapter, NAACP v. Beecher, supra,* 371 F.Supp. at 520-523.

Compliance with the consent decree has been met in all respects. Although minority percentage goals have not yet been achieved, this is in no way due to a lack of compliance.

In 1981, the City of Boston became faced with budgetary restrictions resulting from the passage of a tax limitation proposition by the voters of Massachusetts. The City decided to deal with its financial difficulties, in part,

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[4] The seniority system is valid under both the U.S. Constitution and the Civil Rights Act of 1866, 42 U.S.C. § 1981, absent a showing of discriminatory purpose in its inception or operation. See *Washington v. Davis,* 426 U.S. 229 (1976) (Fourteenth Amendment); *General Building Contractors Association, Inc. v. Pennsylvania,* —— U.S. ——, 73 L.Ed.2d 835 (1982) (Section 1981).

by extensive reductions in its employment force. As noted above, Massachusetts law dictates that such reductions occur on a reverse seniority basis. As a consequence of the routine application of the "last-hired, first-laid off" provisions of the Massachusetts seniority statute, some minority employees hired as a result of the remedial measures contained in the consent decree would have lost their jobs temporarily.[5] Pet. App. A30 *et seq.*

This effect of the seniority system, and this effect alone—i.e., the temporary delay in the complete realization of the voluntarily-agreed upon quotas in the workforce—formed the basis for the lower court's modification of the consent decree to enjoin the routine operation of the system. As the Court of Appeals acknowledged, its sole concern was to preserve "the progress made to date in integrating the departments." Pet. App. A24.

C. The Courts Below Exceeded Their Authority In Enjoining The Routine Operation Of The Seniority System.

The original consent decree was founded on findings of violations of the Fourteenth Amendment, Section 1981, and Title VII based on the disparate impact of the City's hiring and recruitment practices. Because of intervening

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[5] It is significant to note that none of those minority applicants who had sought employment with the Fire Department prior to the entry of the decree and who subsequently were hired would have suffered from the 1981 layoffs, due to the longevity of their employment. See Pet. App. A23, n.14. The minority employees who would have been laid off absent the District Court's injunction all applied for positions for the first time well after the decree was entered. Over the objections of the petitioners, both the District Court and the Court of Appeals found it unnecessary to undertake any evidentiary inquiry on this point. Pet. App. A24. Relief was granted despite the absence of any finding that the employees to be affected by the layoffs were in fact "identifiable victims of racial discrimination." *Cf. Franks v. Bowman Transportation Co., supra,* 424 U.S. at 772.

changes in the law, only the Title VII findings remain a viable basis for relief, and then only within the statutory confines of the remedies contemplated by Congress. Within these confines there exists no proper authority for the injunction against the routine operation of the seniority system granted by the courts below.

1. *The Fourteenth Amendment.*

The original consent decree was entered before this Court's opinion in *Washington v. Davis*, 426 U.S. 229 (1976). *Washington v. Davis* arose on a similar factual pattern to this case but resulted in a wholly opposite result. In *Washington*, this Court rejected the proposition "that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional *solely* because it has a racially disproportionate impact." *Id.* at 239. This Court specifically expressed its disagreement with the contrary holdings of certain Courts of Appeals "that the substantially disproportionate racial impact of a statute or official practice standing alone and without regard to discriminatory purpose, suffices to prove racial discrimination violating the Equal Protection Clause absent some justification going substantially beyond what would be necessary to validate most other legislative classifications." *Id.* at 244. Among those decisions identified as being founded on that faulty premise was the holding of the First Circuit in the Boston police case (*Castro v. Beecher*, 459 F.2d 725, 732-733 (1st Cir. 1972)). *Id.* at 244, fn. 12. As this Court is well-aware by virtue of its grant of certiorari in *Boston Police Patrolmen's Association, Inc. v. Castro, et al.*, No. 82-246, the holding in the Boston police case culminated in a decree virtually identical to the consent decree underlying the issue presented here. Plainly, had either the parallel police case or this case been before the Court at the time of *Washington v. Davis*, reversal would have occurred.

Thus, *Washington v. Davis* wholly discredits the constitutional predicate of the consent decree in the clearest terms. When the decree in this case was originally made, it might have been said that the issue of the need to prove intent was in doubt. In 1981 when modification was sought, no such doubt existed.

Had the same facts then been brought before the District Court, no Constitutional violation could have been found. Certainly by 1981, to reconfirm the earlier defective findings as a basis to deny a modification in favor of the defendants or to grant further relief to the plaintiffs constitutes abuse of judicial discretion. The Court of Appeals' cavalier disregard of this Court's evaluation of its earlier holding represents such an abuse. *Cf. System Federation No. 90 v. Wright*, 364 U.S. 642, 648, 652 (1961); *Chance v. Board of Examiners*, 561 F.2d 1079, 1085 (2d Cir. 1977) (dictum); *Theriault v. Smith*, 523 F.2d 601 (1st Cir. 1975). *See, Chance v. Board of Examiners*, 79 F.R.D. 122, 127 (S.D. N.Y. 1978).

2. *Section 1981.*

The original consent decree was entered before this Court's opinion in *General Building Contractors Association, Inc. v. Pennsylvania*, —— U.S. ——, 73 L.Ed.2d 835 (1982). In the *General Building Contractors* case, this Court held that the Civil Rights Act of 1866, 42 U.S.C. § 1981, was directed at intentional discrimination only. Thus, the Court ruled that liability may not be imposed under Section 1981 without proof of purposeful discrimination.

For the same reasons that the Constitutional predicate for modification of the consent decree was vitiated by the intervening interpretation of the law, so too has the Section 1981 underpinning for the decree now been eroded. See discussion *supra*, pp. 11-12.

3. *Title VII*

Hence, the only possible statutory basis remaining for the District Court's exercise of its general equitable power to modify a decree was Title VII. Even under Title VII, however, a federal court's powers in equity are not boundless. Where private litigants assert claims arising under federal statutes, federal courts may exercise their jurisdiction to fashion relief only to the extent consistent with the applicable statute. *See, System Federation No. 90 v. Wright*, 364 U.S. 642, 651 (1964) ("[T]he District Court's authority to adopt a consent decree comes only from the statute which the decree is intended to enforce."); *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 457 (1957); *Wheeldin v. Wheeler*, 373 U.S. 647, 651-652 (1963). When the authority of the federal courts derives from an Act of Congress, substantive rights simply do not exist if they are not created by the statute. "[I]n our constitutional system, the commitment to the separation of powers is too fundamental for [the courts] to pre-empt congressional action by judicially decreeing what accords with 'common sense and the public weal.'" *TVA v. Hill*, 437 U.S. 153, 195 (1978).[6] In other words, the mere concern that harm has occurred does not empower a court to exercise its injunctive powers if the harm is the result of an act which is protected by statute.

The objectives of Title VII have been reiterated by this Court on many occasions. The rights and remedies thereunder have been subjected to the closest of scrutiny. Insofar as seniority rights are concerned, this is not a case where the statute is ambiguous or silent so that

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[6] Title VII, of course, epitomizes Congress' formulation of public policy. When Congress so acts, it supplants with its own views any judicial determination of public policy. *Cf. United States v. Atlantic Mutual Ins. Co.*, 343 U.S. 236, 245 (1952) (Frankfurter, J., dissenting). Compare *Holmberg v. Armbrecht*, 327 U.S. 392, 395 (1946); *Northwest Airlines v. Transport Workers*, 451 U.S. 77 (1981).

the Court must analyze whether Congress intended to create the remedy asserted. *Cf. Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 639-640 (1981); *Transamerica Mortgage Advisors v. Lewis*, 444 U.S. 11 (1979). Rather, as shown earlier, here the statute on its face is explicit in its directive that the operation of a legitimate seniority system is inviolate and shall not be overridden despite any disparate impact it may cause. The proposition that a federal court may shunt such clearly expressed legislative intent simply because it perceives the equities of a case before it to so dictate is repugnant to the approach established in this Court's decisions. Nevertheless, that is precisely what the courts below have done.

Under the guise of protecting progress toward an ultimate agreed-upon resolution of an unintentionally discriminatory *hiring* system, the lower courts have undertaken to enjoin the routine operation of a statutorily protected *seniority* system. Although superficially, the relief accorded—requiring the maintenance of separate minority and nonminority lists with respect to seniority for layoffs and recall—might seem to fall within that type of constructive seniority relief sanctioned by this Court's opinion in *Franks v. Bowman Transportation*, *supra*, the Court of Appeals expressly disavowed this notion—"[t]his case does not involve an award of constructive seniority to individuals who have been discriminated against; the orders require that there be a certain percentage of minorities on the Police and Fire Departments without regard to whether the individuals comprising the minority percentage were the actual victims of past discrimination. Pet. App. A20-A21. In fact, the Court of Appeals lamented the fact that "such a limited remedy [i.e. an award of constructive seniority to actual discriminatees] would result in minority ratios far below that set by the district court." Pet. App. A23.

The tone of the Court of Appeals' opinion is decidedly legislative, which must subvert it. *Cf. Northwest Air-*

lines v. Transport Workers, supra, 451 U.S. at 97-99. Not satisfied with the remedies envisioned by Congress as within the statutorily invested powers of the court, the Court of Appeals embarked upon the defense of a decree to which the parties might have but did not agree. Declaring its responsibility to protect the public interest which it perceived to require additional protection, and ignoring the Congressional considerations underlying the statute which constitutionally represents the protection of the public interest,[7] the Court of Appeals decried the unfairness of "the imposition of a rigid last hired, first fired seniority system" in these circumstances. In so doing, the Court of Appeals clearly overstepped its authority under the Constitution and thereby abused its discretion in approving the 1981 modifications to the decree.[8]

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[7] As this Court reminded recently in *Northwest Airlines, Inc. v. Transport Workers Union of America, supra*, 451 U.S. at 95,

> . . . federal courts, unlike their state counterparts, are courts of limited jurisdiction that have not been vested with open-ended lawmaking powers . . . . [T]he federal lawmaking power is vested in the legislative, not the judicial branch of government; therefore, federal common law is "subject to the paramount authority of Congress." New Jersey v. New York, 283 U.S. 336, 348, 75 L.Ed. 1104, 51 S. Ct. 478.

In addition, the Court noted that:

> once Congress addresses a subject, even a subject previously governed by federal common law, the justification for lawmaking by the federal courts is greatly diminished. Thereafter, the task of the federal courts is to interpret and apply statutory law, not to create common law. See, e.g., Illinois v. Milwaukee, supra, at 107, 31 L. Ed. 2d 712, 92 S. Ct. 1385; Arizona v. California, 373 U.S. 546, 565-566, 10 L. Ed. 2d 542, 82 S. Ct. 1468.

Id. at 95, fn. 34.

[8] Simply stated, the Court of Appeals' reliance on *Bakke (University of California Regents v. Bakke*, 438 U.S. 265 (1978) and *Weber (United Steelworkers of America v. Weber*, 443 U.S. 193 (1980)) both of which dealt with the legality of racial preferences

Plainly, the consent decree had as its objective a percentage increase in the number of minority employees in the Fire Department. The agreed-upon means for attaining this objective was through the hiring process—not through any program of seniority adjustment or firing of existing nonminority employees. The decree makes no reference to seniority at all. There being no such reference, the decree must be interpreted as placing no restrictions on treatment of minority applicants once hired into the workforce in the same manner as other employees.

The objectives of the consent decree have been and continue to be met. Entrance examinations have been changed, recruitment practices have been modified, and priority certification groups for minority applicants have been created that still exist and will continue to exist until agreed-upon quotas have been met.

It cannot be denied that the economic circumstances which brought about the need for layoffs in 1981 may have delayed that day when the agreed-upon quotas will be achieved. A temporary setback in the progress toward that goal has occurred. That delay however has not been occasioned by any attempt to circumvent the agreement clearly set forth in the decree. It has resulted from the neutral operation of a statutorily-protected seniority system.

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in voluntary affirmative action programs, misses the point. Were the terms of the initial consent decree under challenge, perhaps the considerations underlying *Bakke* and *Weber* would be germane. Here, however, the relief sought in the form of modification of the decree was wholly new to the terms of the compact and did not enjoy the blessing of both parties to the decree. The additional relief awarded by the District Court was in no sense voluntary and did not represent judicial approval of an agreement between the parties as was involved in *Weber*. It was rather, as conceded by the Court of Appeals, an effort to fill a gap overlooked by the respondents when the settlement was originally negotiated—"Nor do we think that plaintiffs should be penalized for failing, in negotiating the decrees, to have foreseen the unprecedented change in state and local fiscal policy resulting in the extensive layoff programs." Pet. App. A14-A15.

To permit the District Court to supersede the vested seniority rights protected by Section 703(h) is to undo the Constitutional balance by judicially enlarging upon explicit limitations imposed by Congress on the general remedial provisions in the Act.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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